IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4222 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAHURMOHMAD NOORMOHMAD NAGORI

Versus

STATE OF GUJARAT

Appearance:

MR FB BRAHMBHATT for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/01/2000

ORAL JUDGEMENT

#. Heard Mr. F.B.Brambhatt, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 11-4-1999 passed by

respondent No.2 - District Magistrate, Banaskantha Palanpur against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu, a copy of which is produced at Annexure-B interalia indicates that 6 prohibition cases were registered against the petitioner - detenu at different police stations and in each of the case, Indian made Foreign Liquor has been seized from the possession of the petitioner. That all the 6 cases are pending for trial in the Court. The grounds further indicate that 4 witnesses on assurance of their anonymity have given information regarding the bootlegging activities of the petitioner and on the basis of the said material, respondent No.2 has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended on behalf of the petitioner that the detaining authority has passed the impugned order on 11-4-1999. That before that the petitioner was released on bail in all 6 registered cases which were pending for the trial. However, while passing the impugned order, the detaining authority has failed to consider the less drastic remedy of claiming cancellation of bail as available under Section 437(5) of CrPC, which discloses non application of mind, vitiating the subjective satisfaction and rendering the detention order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case also, the grounds of detention produced on record vide Annexure-B does not disclose any

averments from which it could be inferred that before passing the order, the detaining authority has ever considered the aspect of resorting to less drastic remedy like cancellation of bail granted in the registered cases pending against the petitioner. Under these circumstances, I am constrained to hold that the impugned order on account of the said non application of mind, is bad in law.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 11-4-1999 passed by respondent No. 2 - the District Magistrate, Banskantha against the petitioner is hereby quashed and set aside. The petitioner - Jahurmohmad Noormohmad Nagori is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 12-1-2000 [A.K.Trivedi, J.]

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